

International approaches to tackling corruption: what works and what doesn't?

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FOCUS

ANTI-CORRUPTION: AN INTERNATIONAL AFFAIR WITH DOMESTIC EFFORTS

INTERNATIONAL APPROACHES TO TACKLING CORRUPTION: WHAT WORKS AND
WHAT DOESN'T?*Dan Hough**

Abstract A well-developed set of international anti-corruption tools now exists. These range from broad conventions to focused initiatives in specific policy areas. This article argues that international agreements work best when they are focused and they speak to the common interests of the parties involved. Solutions need to be creative, they need to bring in a broad coalition of stakeholders and they need to be focused on specific problems. International agreements need to help states with good quality institutions of governance focus on developing transparency initiatives, accountability drives and nuanced efforts to tackle particular national variants of “legal corruption.” In countries with patchy institutions of governance the scope for international influence is broader, while in states with serious governance challenges the best international anti-corruption efforts will often have surprisingly little to do with corruption at all. In a state where the rule of law is patchy or non-existent then anti-corruption laws (or indeed laws more generally) mean very little. The challenge here is to improve the basic tools of governance in the knowledge that only then can the issue of corruption be brought on to the agenda.

Keywords corruption, anti-corruption, UNCAC, OECD, transparency

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INTRODUCTION

Given the amount of time and effort spent analyzing corruption in recent years it should come as no surprise that there are a wide variety of potential remedies on the market. Indeed, the world is most certainly not suffering from a dearth of toolkits, action plans, agreements, conventions, treaties and agendas for change. The aim of this article is not to unpack every anti-corruption option available, but rather to look at the evidence for what seems to work, what does not and how one could learn from both sets of outcomes. It focuses on international attempts to tackle corruption as well as initiatives that have an international resonance. To be blunt, the evidence that genuine progress has been made in tackling corruption is disappointingly thin on the ground. There is subsequently a case both for re-thinking what we think might work and also for assessing what indeed “success” might mean.

I. ZERO-TOLERANCE, ZERO PROGRESS?

For starters, any anti-corruption attempt that claims to want to eradicate corruption or indeed to adopt a “zero-tolerance approach” should be treated with more than a dose of scepticism. The aims are too grand and, quite frankly, incompatible with the rough and tumble of everyday life. Corruption will often be deeply embedded in given social and political practices and will be part of complex and ever-changing power relationships. That is as true in the UK as it is in China. That is all before any consensus has been reached as to what exactly the problem is and what needs to be done to put it right. The specific aims of anti-corruption efforts, in other words, need to be carefully defined.

Reforms often take a long time to work, they need a modicum of good fortune along the way and can be “a lot more messy and acrimonious” than is generally anticipated.¹ One-size-fits-all policies, even of the most apparently obvious nature, can be counterproductive. Carefully designed strategies that are focused on local contexts and specific problems are very much the order of the day—even if they, too, fail from time to time as well.

That may sound rather pessimistic. But there are also grounds for optimism. Not optimism of the “corruption can be swept away” variety, but on the grounds that there are

¹ Michael Johnston, *Political Will or Political Won't*, 7(2) International Affairs Forum, 16 (2016). See also Michael Johnston, *Corruption, Contention, and Reform: The Power of Deep Democratization*, Cambridge University Press (Cambridge), (2013).

ever more nuanced and potentially useful approaches developing. Both the international transparency and accountability agendas have developed traction in recent years, and one can go as far as saying in terms of transparency at least a norm is rapidly establishing itself. In order for this to have a genuine impact then there needs to be further work done in integrating national approaches around commonly agreed international standards. As noted below, there are reasons to believe that progress can be made in this area.

II. INTERNATIONAL ORGANIZATIONS AND THE ANTI-CORRUPTION AGENDA

Of all the mismatches in the world of anti-corruption the one between predominantly national efforts to tackle what is in essence an international problem is the most obvious. Assets that have been inappropriately acquired, for example, can be both quickly and easily laundered in apparently far-off jurisdictions. Criminals of all shapes and sizes have long since become adept at using global networks to avoid national law enforcement authorities. One of the clearest and most challenging tasks for those looking to combat corruption is subsequently to face down an inherently international set of problems with what still remain a wide and diverse set of predominantly national tools.

A. The UNCAC

The United Nations (UN) is the most obvious international institution that tries to face this problem down. The practical effects of the UN's anti-corruption resolutions have traditionally remained relatively small, mainly as the UN does not tend to have the tools to enforce or even monitor its own anti-corruption clarion calls. The UN has nonetheless attempted to bring a more concerted and co-ordinated approach to its anti-corruption work via the United Nations Convention against Corruption (UNCAC). As of Autumn 2016, the convention had 140 full signatories whilst 194 entities were "parties" to it.¹ The UNCAC covers a considerable amount of ground, and there are provisions on law enforcement, preventative measures, international co-operation and technical assistance plus asset recovery. Parts of UNCAC are mandatory whilst other provisions remain suggestive.

Since 2009, states' progress in meeting the obligations that UNCAC places on them has been assessed via the Implementation Review Mechanism (IRM). The IRM is aimed at helping countries use a comprehensive self-assessment checklist to identify their progress and to pinpoint areas where they are experiencing problems.² In theory, the process is co-operative and collaborative, and the country under review actively contributes to the final report that is being produced. The idea is that it is easier to make

¹ For a full and updated list, available at <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html> (last visited Nov. 20, 2016).

² Conference of the States Parties to the United Nations Convention against Corruption, *Report of the Conference of the States Parties to the United Nations Convention against Corruption on Its Third Session*, held in Doha from Nov. 9 to Nov. 13, 2009 (Vienna, UNODC), at 4.

progress if a constructive dialogue is taking place.

The convention is certainly not lacking in ambition or indeed high-minded ideas, but in the cold light of day the impact of the treaty remains questionable. The “soft” nature of law in the international sphere means that implementation is always going to be more about persuasion than compulsion. One of the challenges that anti-corruption campaigners subsequently face is that of how to embed many of the principles in national law and also, most significantly, to make sure that national level actors do justice to them in practice. As Transparency International’s Marie Chêne notes “although legal measures, such as anti-corruption acts and agencies, have been established to execute UNCAC, there are local constraints to the full implementation of the Convention.” She specifically pinpoints “under-funding and lack of political will” as challenges.³ She could, however, have gone further. In 2013, Transparency International bluntly claimed that “the official process is not strong enough to keep countries on track” and that having analyzed 60 of the 69 completed reviews at that point the process “contains inherent weaknesses that undermine its effectiveness.”⁴ Or, as Chêne put it four years previously, progress has undoubtedly been made in sharpening up legal frameworks and aligning domestic legislation with UNCAC’s obligations, but “there are still major gaps to overcome for successful implementation.” Furthermore, many governments remain reluctant to publish their own self-assessments, let alone the full reports that are ultimately produced. In the cold light of day, it is clear that it is often very much easier to talk a good game than it is to play one.

B. The OECD

The Organisation for Economic Co-operation and Development (OECD) has developed a “Convention on Combating Bribery of Foreign Public Officials in International Business Transactions” and it was adopted in November 1997. The convention is “the world’s most ambitious global agreement to combat business corruption” and requires signatories to enact domestic legislation criminalizing the bribery of foreign public officials and to impose strong sanctions on those who break the law.⁵

The convention claims to establish “legally binding standards to criminalise bribery of foreign public officials in international business transactions” and there is an expectation

³ Marie Chêne, *Update on UNCAC Implementation in Africa, U4 Expert Answer* (Bergen: U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute), at 1 (2009).

⁴ Transparency International, *UNCAC Review Mechanism: Up and Running but Urgently Needing Improvement*, (2013), available at http://www.transparency.org/news/feature/uncac_review_mechanism_up_and_running_but_urgently_needing_improvement (last visited Nov. 21, 2016)

⁵ Terrence Chapman, Nathan Jensen & Edmund Malesky et al., *International Bribery Laws and Firm Strategic Behavior: Did the OECD Anti-Bribery Convention Increase Bribery?*, IPES Working Papers (Princeton), (2016), available at https://ncgg.princeton.edu/IPES/2016/papers/S230_rm1.pdf (last visited Nov. 21, 2016).

that these standards will be translated into national legislation.⁶ Like UNCAC, the OECD's convention makes use of peer-review as a tool for ensuring that signatories make good on their obligations. The monitoring reports subsequently contain recommendations that are "formed from rigorous examinations of each country."⁷

However, much as is the case with the UNCAC, the OECD has no authority to actively enforce the convention. The OECD has developed an intricate four-phase monitoring process to oversee enforcement, but if states do not move to actively implement their promises then the OECD is powerless to compel them. The only power it has is the power to persuade. Unsurprisingly, this has led to a mixed implementation record. In 2016, Transparency International noted that only four (Germany, Switzerland, the UK and the USA) countries were actively enforcing the treaty, whilst six (Austria, Australia, Canada, Finland, Italy and Norway) were "moderately" enforcing it. In just under half of the 20 signatory states there was only very little or no enforcement taking place at all. That group included Denmark, the state that came in 1st in the 2016 Corruption Perceptions Index.⁸

That mixed implementation record may, however, still be better than having no implementation record at all. As Jensen and Malesky have noted, bringing in a peer review phase made a clear difference to the bribery behavior of signatory countries' firms active in Vietnam. They put that down to OECD signatory governments becoming more willing to police the behavior of "their" firms abroad.⁹ That is undoubtedly a positive development.

However, there may well be a cloud accompanying that particular silver lining; there is also evidence of a series of unanticipated effects on the behavior of firms from states that do not participate in the convention. These firms are more likely to bribe than they were before the OECD brought in its system of peer review. Furthermore, firms from non-signatory states "will tend to increase their bribery effort" as less competition from firms across the 41 signatories "translates into a higher probability of accessing rents." To compound that even further this increased rate of bribery "is exacerbated as the quality of monitoring and the severity of enforcement under the convention increases." In other words, the more the OECD policies its own convention, the more bribery we see from the 150 plus non-signatory states.¹⁰

⁶ OECD, *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, (Paris, OECD), (2016), available at <http://www.oecd.org/corruption/oecdantibriberyconvention.htm> (last visited Nov. 21, 2016).

⁷ Id.

⁸ Transparency International, *Exporting Corruption*, (2015), available at https://www.transparency.org/exporting_corruption/ (last visited Nov. 21, 2016).

⁹ Nathan Jensen & Edmund Malesky, *Does the OECD Convention Affect Bribery? Investment Liberalization and Corruption in Vietnam*, Unpublished Manuscript (2016).

¹⁰ See Chapman, Jensen & Malesky et al., fn. 5.

If the aim of the OECD's convention is to reduce overall levels of bribery, then this is clearly a worrying finding and poses plenty of awkward questions. Further research is needed before those findings can be generalized more broadly. Vietnam is, after all, just one country. But the conclusions provide plenty of food for thought. One way forward will be to try and sign up more countries to the treaty's aims. If those signatories are states with significant export sectors, then there is good reason to believe that the OECD's treaty can make a real impact on international bribery transactions. If that proves elusive, then the treaty's advocates may have a real problem. If nothing else, this is a perfect example of how the road to successfully fighting corruption is nothing if not winding.

C. Regional Anti-Corruption Initiatives

There are now a number of regional initiatives that look to set common anti-corruption standards. Indeed, most regional governance bodies now talk about corruption in some way, shape or form. Quite how they talk about it and what action those discussions lead to is, however, another matter. In Europe, for example, the Council of Europe (CoE) has developed both civil and criminal law conventions on corruption. In 1999, it also set up the Group of States against Corruption (GRECO) with the aim of monitoring compliance with both of these conventions as well as with the CoE's other anti-corruption initiatives. More specifically, GRECO uses the now familiar tools of mutual evaluation and peer pressure to identify deficiencies in national anti-corruption policies. It also claims to provide a forum that enables member states to share best practice in preventing and detecting corruption.¹¹

1. The European Union.—The European Union (EU) also now has a number of quite clear anti-corruption provisions. Judicial co-operation between EU member states to prevent corruption by EU-level or indeed nation-state level officials has existed since 1997, whilst, before they were abolished in the Lisbon Treaty, the EU passed a number of framework decisions—decisions that required member states to achieve a particular outcome without being told specifically how to do it—that looked to combat corruption. The EU has also set up its own anti-fraud body (OLAF) to try and prohibit fraud within the EU budget and across the EU's institutions, as well as to develop broader anti-fraud legislation. With over 1,400 investigations and € 3 billion recovered between 2010–2015, OLAF clearly has also been busy.¹² The EU has also been keen to stress the importance of anti-corruption in the accession process, and both Romania and Bulgaria had their applications for EU membership delayed on account of making too little progress in this area.

¹¹ Council of Europe, *Group of States against Corruption (GRECO)*, (2014), available at http://www.coe.int/t/dghl/monitoring/greco/general/3.%20What%20is%20GRECO_en.asp (last visited Nov. 23, 2016).

¹² See http://ec.europa.eu/anti-fraud//home_en (last visited Nov. 23, 2016).

The impact of all this activity remains harder to discern. The EU has little power to compel member states to take action in this area, and where anti-corruption progress is made it is not always easy to see the EU's hand at play. Liljana Cvetanoska has nonetheless illustrated that the accession process is one area where some progress can be made. Even then, substantive moves to enact anti-corruption legislation are much more likely to happen early on in the accession process when states theoretically have most ground to make up but only when it suits the needs of those in power. In Macedonia, for example, the pull of the EU was simply not as strong as the defence of systems that were working very nicely for those at the top of the pyramid.¹³ In situations like that, the EU's power to persuade remains much weaker than it might like.

2. *Other Regional Initiatives.*—It is not just the EU and European states that have been thinking about corruption. In Africa, the “African Union Convention on Preventing and Combatting Corruption” came in to force in 2003 and has 35 signatories. This convention covers a wide range of issues in both the public and the private sectors and all provisions are mandatory. Issues such as recovering stolen assets and improving regional co-operation figure prominently. The League of Arab States also has a “Convention on Corruption” that came in to force in 2010 where the restitution of assets and providing mutual judicial assistance are flagged as being particularly important. On the other side of the world, the countries in the Organization of American States ratified the “Inter-American Convention against Corruption” as long ago as 1996. The focus there is more on the public sector and it represents an effort to find a regional consensus on a range of corruption issues. Even in East Asia, traditionally something of an outlier, China has been working with other Association of Southeast Asian Nations (ASEAN) states to try and develop regional anti-corruption legal frameworks.¹⁴

These initiatives sound impressive on paper, but when the complex and challenging nature of tackling corruption is remembered, it would nonetheless be unreasonable to expect too much from them. There are, however, good reasons to wonder whether these regional bodies represent a coherent way forward. A number of regions do not have regional bodies at all and Matthew Stephenson has outlined why there may be good reasons for them not to bother creating them. UNCAC, Stephenson notes, claims to be the global instrument for tackling corruption. If international efforts are subsequently going to work, then UNCAC would appear to be the most appropriate vehicle for helping them to do so. Plus, the majority of the regional conventions existed before UNCAC came along—creating new ones now would seem a little odd.

There is, as Stephenson argues, a case to be made that regional conventions can

¹³ Liljana Cvetanoska, *The European Union's Anti-Corruption Enlargement Conditionality: Comparing the Czech Republic, Romania and Macedonia*, University of Sussex (Brighton) Ph.D. dissertation (2017).

¹⁴ ZHANG Yan, *China, ASEAN to Bring Corrupt Officials to Justice*, China Daily, Nov. 3, 2016, available at http://www.chinadaily.com.cn/china/2016-11/03/content_27260187.htm (last visited Nov. 23, 2016).

conduct more frequent reviews and they can build on the basis that the UNCAC provides, but there is also a real danger of “convention overload” and “peer review fatigue.”¹⁵ The impression would become ever more prominent that more time was being spent talking about corruption than actually tackling it. On top of that, the idea that local neighbors work better together can often be a long way removed from reality. Furthermore, the temptation may also be there to “respect local values” and in effect nicely undercut UNCAC. As Stephenson persuasively notes, the “focus both within the region and outside should be on pressing for compliance with global norms” that everyone understands and can sign up to.¹⁶

Over and beyond these conventions, there are a plethora of more focused initiatives that try to do something about particular parts of the corruption problem. These initiatives range from quite expansive attempts to tackle money laundering fostering more transparency in the extractive industries to the creation of much lower profile initiatives in specific sectors.

III. FINANCIAL ACTION TASK FORCE

The Financial Action Task Force (FATF) is a good example of an organization that is dealing with a complex, international problem such as money laundering and latterly terrorist financing, that is by definition exceptionally difficult to uncover let alone root out. FATF has developed a series of recommendations (49 as of 2016) and signatories are expected to enact them in to their domestic legal frameworks. FATF, again via peer review, assesses their success and failure in doing that. Currently, it has 37 full members and 8 associate members as well as many more countries that have generally endorsed the standards that FATF has developed and made a commitment to upholding them.

Though FATF’s task is tough, there is reason to believe that it has made a difference. Sabina Kook from the US treasury, for example, noted in 2013 that FATF is almost “unique among the scores of global governance bodies” as it does actually appear to have been “largely successful in pushing countries forward to comply with its standards.” The process of reviewing promises to commit to FATF’s standards has been useful whilst the “strong multilateral action” that has ensued when states have not played ball has caught the eye.¹⁷ The strongest of these actions involves FATF effectively blacklisting any of the jurisdictions around the world that it deems uncooperative. Indeed, in 2000 it

¹⁵ Matthew Stephenson, *A Regional Anticorruption Convention in the Asia-Pacific?*, The Global Anticorruption Blog, (2014), available at <https://globalanticorruptionblog.com/2015/09/01/a-regional-anticorruption-convention-in-the-asia-pacific/#more-3988> (last visited Nov. 23, 2016).

¹⁶ Id.

¹⁷ Sabina Kook, *Financial Action Task Force (FATF) Evolving in Its Effort to Combat Money Laundering and Terrorist Finance*, United States’ Treasury Notes, Mar. 27, 2013, available at [https://www.treasury.gov/connect/blog/Pages/Financial-Action-Task-Force-\(FATF\)-Evolving-in-its-Effort-to-Combat-Money-Laundering-and-Terrorist-Financing.aspx](https://www.treasury.gov/connect/blog/Pages/Financial-Action-Task-Force-(FATF)-Evolving-in-its-Effort-to-Combat-Money-Laundering-and-Terrorist-Financing.aspx) (last visited Nov. 24, 2016).

published a list of 15 jurisdictions that it officially called “non-cooperative countries or territories.” By October 2013, that list included 13 jurisdictions, but by June 2014 the number had fallen to six (Iran, North Korea, Algeria, Ecuador, Indonesia and Myanmar). By October 2016, only Iran and North Korea were left on the so-called blacklist.¹⁸ The impact of being blacklisted has arguably been more significant than have the recommendations that FATF has developed, and a number of countries have reacted quickly, and often grumpily to being described as non-cooperative.

IV. EXTRACTIVE INDUSTRIES’ TRANSPARENCY INITIATIVE

The Extractive Industries Transparency Initiative (EITI) has been quite successful. It is, however, rather more contested. Formed in June 2003, it has developed a global standard to promote and ensure openness and transparency in the gas, oil and mining industries—industries that have traditionally been plagued by corruption. The logic of the EITI is simple; information should be publicly shared on every part of the resource extraction process. That includes how much companies pay for licenses to do the extracting, how much of that resource they then produce, what they charge for it and who pays them for it. Governments, for their part, need to reveal their incomings from the extractives sector and to explain how that money is spent. Membership of EITI is not just limited to countries; companies and civil society initiatives are also welcome to join. In May 2005, EITI stakeholders worked together to establish six criteria outlining the minimum transparency requirements they felt should be required. By 2011, these rules had developed in to 23 specific criteria and in May 2013 these became the “EITI Standard.”

51 countries have committed themselves to upholding that standard, and every one of them is required to publish an annual report disclosing all information on each part of the resource extraction process. In theory, the EITI sets a high barrier. Furthermore, it has been “an important and innovative actor” leading the way in “developing consultative processes” that have had a clear impact in terms of opening up discussions on transparency across the extractive industries and indeed beyond.¹⁹ In terms of oil and gas, there is a move towards an openness that simply did not exist just a decade ago. That should be counted as success of a sort. This move is necessarily piecemeal and at times cumbersome, but it is a move in the right direction. Plus, before EITI there was no global discussion at all about the behavior of those in the extractives sector; this really is a case that something is better than nothing.

¹⁸ FATF, *Public Statement, 21 October 2016*, available at <http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/public-statement-october-2016.html> (last visited Nov. 24, 2016).

¹⁹ Martin Brown, *The EITI and the Challenge of Transparency*, Sussex Centre for the Study of Corruption Blog, (2015), available at <https://scscsussex.wordpress.com/2015/12/17/the-eiti-and-the-challenge-of-transparency/> (last visited Nov. 25, 2016).

It is nonetheless intriguing that some of the countries that are most prone to corruption in the area of extractives have still been keen to sign up to EITI. At first sight, that would appear to be a paradox; why commit yourself to more transparency when that very commitment is likely to prevent many government insiders from reaping the rewards of the deals that they have struck? Elizabeth David-Barrett and Ken Okamura offer an explanation for this. They argue that “EITI serves as a reputational intermediary” for an array of stakeholders. Governments intent on reforming at least some of their ways “can signal good intentions” whilst actors in the international arena “can reward achievement” in the cases of those who make substantive progress. Transparency becomes a norm that ever more governments (at least appear to) want to subscribe to. A small but noticeable virtuous circle is therefore created.²⁰

There have nonetheless been a string of criticisms made of EITI. In the cold light of day, the EITI does not possess many teeth. The options for sanctioning miscreants are only weak at best. Exxon Mobil, for example, is a member of the EITI US Multi-Stakeholder Group, but it still refuses to share information on the taxes that it pays in the USA.²¹ There are also questions about what precisely EITI should demand of signatories; should the barrier be high in the knowledge that some countries and companies will fail or should it be lower with a view to slowly coaxing and cajoling everyone forward? EITI participants have had plenty of internal arguments about precisely this.

V. THE SHIPPING AND MARITIME INITIATIVE

One initiative that has nonetheless made a clear impact on its industry is the “Shipping and Maritime Initiative” at TRACE International. Its focus is on how to tackle bribery and corruption more broadly at ports. It has a narrower focus than the EITI and that may be one of the reasons that it appears to have been more successful. The initiative was developed “in response to the direct request of vessel owners, shipping agents and freight forwarders” and aims to develop focused solutions that help to rise to the not insignificant compliance challengers in this sector.²² The activities that are included in this initiative are quite wide-ranging; knowledge-sharing and benchmarking take place through an anti-bribery customs working group, for example, whilst due diligence

²⁰ Elizabeth Dávid-Barrett & Ken Okamura, *Norm Diffusion and Reputation: The Rise of the Extractive Industries Transparency Initiative*, 29(2) *Governance*, 227 (2016).

²¹ Patrick Rucker, *Exxon Blocking U.S. Progress on Energy Transparency: Watchdog Chief*, *Business Insider*, Dec. 7, 2015, available at <http://www.businessinsider.com/r-exxon-blocking-us-progress-on-energy-transparency-watchdog-chief-2015-12> (last visited Nov. 25, 2016). See also Martin Brown, *The EITI and the Challenge of Transparency*, *Sussex Centre for the Study of Corruption Blog*, (2015), available at <https://scsccsussex.wordpress.com/2015/12/17/the-eiti-and-the-challenge-of-transparency/> (last visited Nov. 25, 2016).

²² For more see *Shipping and Maritime Initiative*, available at <http://www.traceinternational.org/shipping/> (last visited Nov. 25, 2016).

reviews take place of third party companies active in the sector and the results of which are provided to shipping and ports' agents. TRACE International's efforts certainly will not eradicate corruption in the maritime industry, but the initiative nonetheless fits the mould of the type of collective action thinking that long-time advocates of such ideas such as Mark Pieth have championed; stakeholders working together on discrete challenges to come up with mutually agreeable solutions.²³

VI. THE TRANSPARENCY CHALLENGE

The challenge of putting transparency at the heart of governance is now a fundamental part of many of these reform initiatives. Indeed, the vast majority of governments laud the value of transparency in abstract terms, even if they are often much more reluctant to do justice to it in the real world of bureaucratic politics. As the case studies above illustrate, initiatives in this area come in a number of different guises; there are broad commitments to general goals and there are specific schemes that look to try and persuade governments and firms to sign up and implement a given agenda.

These case studies exist within a context of more and more governments claiming that they want to both bring about more open government and encourage the public release of all data related to governments' affairs ("open data"). Both of these initiatives have received plenty of attention in previous years, although it is not always clear precisely how they should work in practice.²⁴ Transparency, of course, has long been regarded as an effective anti-corruption tool, but it was only with the launch of the Open Government Partnership (OGP) by 8 governments in 2011 that it became institutionalized. Improvements in the quality of data available as well as the technology to process and analyze it, plus the development of increasingly vocal international pro-transparency movement led, by Autumn 2016, 70 governments to sign the OGP and to make over 2,500 commitments.²⁵ Governments commit themselves to develop action plans with specific commitments to enable citizens to find out more about what they are doing.

This objective is, however, a deceptively simple one, and quite how governments do this in practice varies a lot from state to state. This, in other words, is an international initiative that is translated very differently from place to place. The broad goals may be regarded as universal, but the implementation is decidedly national. One of the challenges is that there is an implicit assumption that the process of developing an open data and indeed an open government agenda is a value-neutral one. In practice there are disputes about precisely what data should be released, how it should be released and how we

²³ Mark Pieth ed., *Collective Action: Innovative Strategies to Prevent Corruption*, Dike Verlag (St Gallen), (2012).

²⁴ Elizabeth Dávid-Barrett, Paul M. Heywood & Nikolaos Theodorakis, *Open Data as an Anti-Corruption Tool: Theory and UK Practice*, forthcoming in *Public Administration Review*, (2017).

²⁵ Open Government Partnership, *What Is the Open Government Partnership?*, available at <http://www.opengovpartnership.org/about> (last visited Nov. 25, 2016).

should be able to access it. The language used to defend and indeed implement open data agendas is often thoroughly technocratic, but, as David-Barrett et al. note, that “overlook[s] the highly political context in which rules for open data are set and implemented.”²⁶

This has led to a series of challenges—teething problems, optimists would no doubt say—in terms of making open data really come to life. The data is not always published in a format that is easily useable. What it certainly needs to be is both machine-readable and in line with an agreed set of international standards. Offering up reams of .pdfs might enable someone to tick a box on a checklist, but it does nothing in terms of helping interested observers understand what is really going on. There also need to be clear procedures in place for reporting problems and issues that come up in the data; as things stand, that is not the case even in the states that lead the way in terms of the transparency agenda.²⁷

Some states have made impressive progress in developing tools that enable their citizens to find out more about how those in power spend their time and citizens’ money and indeed earn money through other sources. In the UK, for example, websites such as www.theyworkforyou.com (TWFY) enable citizens from the UK and beyond, not just to see precisely what their parliamentarians say and do in parliament, but also where they travelled to for work purposes and the payments over and beyond their salary that they receive for public appearances, speeches and other paid work.

Just a few seconds worth of clicking on TWFY and you will be able to uncover, for example, that on 16 January 2016, Diane Abbot (Labour Party), then the UK’s Shadow Home Secretary, registered a £ 700 appearance fee for co-presenting the BBC’s “This Week” TV show.²⁸ David Davis, then the (Conservative Party) Secretary of State for Exiting the EU, revealed on 1 July 2016 that he received approximately £ 34,000 per annum for the six days of work a year he does for Mansfeider Kupfer und Messing GMBH, a German manufacturing company based in Hettstedt.²⁹

VII. PUBLIC EXPENDITURE TRACKING SURVEYS

Calls for greater transparency come nonetheless in lots of different shapes and sizes. One of the approaches that has real potential involves rolling out what have come to be known as public expenditure tracking surveys (PETS). PETS help highlight cases where

²⁶ See Dávid-Barrett, Heywood & Theodorakis, fn. 25.

²⁷ For more on this in the UK in particular, see Dávid-Barrett, Heywood & Theodorakis, fn. 24.

²⁸ TheyWorkForYou, *Register of Members’ Interests*; Diane Abbot MP, (2016), available at https://www.theyworkforyou.com/mp/10001/diane_abbott/hackney_north_and_stoke_newington#register (last visited Nov. 26, 2016)

²⁹ TheyWorkForYou, *Register of Members’ Interests*; David Davis MP, (2016), available at https://www.theyworkforyou.com/mp/10162/david_davis/haltemprice_and_howden#register (last visited Nov. 25, 2016).

public money has either not ended up where it should have or cannot actually be accounted for at all. That money could, of course, have been misallocated or lost on account of incompetence, but when systematic patterns of misallocation are revealed, we have a pattern of behavior to hand that may well have corrupt practices at its core. PETS have subsequently become “effective in identifying delays in financial and in-kind transfers, leakage rates, and general inefficiencies in public spending.”³⁰ Indeed, it is those “leakage rates” that catch the eye not just of corruption analysts but also of the public at large. It is not difficult to see the reason why; unaccounted for money is rarely dumped in a lake or burnt on a bonfire. It ends up somewhere, and frequently that somewhere is an illegitimate home.

Exploring patterns of leakage across space is therefore an attractive way of illustrating where problems may indeed lie and an increasingly rich research agenda has developed in this area. Jonathan Stromseth, Edmund Malesky and Dimitar Gueorguiev, for example, use this approach in trying to assess how much corruption may or may not be taking place across China’s 33 provinces. They used data from the China National Auditing Office to put together a data set illustrating how much money was misused as a proportion of each state’s provincial budget. They wanted to know, in other words, how much money each Chinese province was unable to account for and they used that figure as a proxy for what they term “macro-corruption.”³¹ Some leakage will happen everywhere and it is important to note that not all leakage comes about because of corruption. Sometimes things really do just get lost. However, in 2011 nearly 20 percent of the budget of Heilongjiang Province was misused—it is highly unlikely that that is all down to mistakes and errors.³²

PETS can also be effective at a much lower level. Indeed, that is in many ways the place where PETS show the greatest potential to impact both policy and service delivery. Being aware of the amount of money allocated to a primary school by a local authority, for example, might not tell you anything about how much corruption is taking place. Looking at the expenditures of the primary school in question, however, may help unpack whether the money that has been allocated has indeed been spent and what it was in fact spent on. Doing this across a representative sample of primary schools in a district will help create a bottom up set of indicators illustrating where money is going and why, and whether there appear to be any anomalies in the process of getting it there.³³

³⁰ Margaret Koziol & Courtney Tolmie, *Using Public Expenditure Tracking Surveys to Monitor Projects and Small-Scale Programs: A Guidebook*, World Bank Publications (Washington D.C.), at 1 (2010).

³¹ Jonathan R. Stromseth, Edmund J. Malesky & Dimitar D. Gueorguiev, *China’s Governance Puzzle: Enabling Transparency and Participation in a Single-Party State*, Cambridge University Press (Cambridge), at 85 (2017).

³² Id. at 101.

³³ For a good example of this in Brazil see Claudio Ferraz, Frederico Finan & Diana B. Moreira (2012), *Corrupting Learning: Evidence from Missing Federal Education Funds in Brazil*, 96 *Journal of Public Economics*, (2012).

In 1996, Uganda became the first country where a PETS was formally carried out. The approach was embraced on account of substantial increases in expenditure on education not trickling down to the education providers. Or, indeed, they may have been trickling down, but there was a widespread belief that they were then being deliberately misallocated and misspent. The PETS approach was used to “compare budget allocations to actual spending through various tiers of government.” This included “frontline service delivery points,” all with the aim of working out where money was actually going.³⁴ The results were chastening. In 1996, only 13 percent of the government expenditure per student actually reached the school that it was theoretically destined for. 87 percent, in other words, either vanished or was captured by local officials for private gain. Making sense of a large and off-the-books bargaining game between schools and local officials was key to understanding who ultimately ended up with what. On seeing these results, the central Ugandan government immediately recognized the problem and took action. Details of how much money was transferred to the local authorities began to be published in newspapers and via other media outlets whilst primary schools were required to make public what they spent the money allocated to them on. With more information available, it became harder for the corrupt bargains that characterized relationships in the mid-1990’s to hold. The government, in other words, signalled that it was going to oversee, and indeed measure, the way that funds were spent.³⁵

CONCLUSION

The international community is making progress in terms of tackling corruption. But that progress is slow, piecemeal and often involves backward steps as well as forward ones. The push towards more robust implementation of FATF’s guidelines, for example, is encouraging. However, an awful lot of countries are wary of embracing the spirit as well as the letter of the agreements that they have signed up to. Plenty of states would be much happier if registers of beneficial owners (for example) were not available to the public at large, and many anti-corruption campaigners were disappointed when in 2016 even David Cameron—a champion of beneficial ownership as a concept—made it clear that the UK’s overseas territories were going to be exempt from the UK’s otherwise impressive new legislation in this area.³⁶

The UNCAC remains the most lauded international initiative, but its effect has been

³⁴ See Koziol & Tolmie, fn. 30 at 3. See also Emmanuel Ablo & Ritva Reinikka, *Do Budgets Really Matter? Evidence from Public Spending on Education and Health in Uganda*, (1998), World Bank Policy Research Working Paper No. 1926.

³⁵ Ritva Reinikka & Jakob Svensson, *The Power of Information: Evidence from a Newspaper Campaign to Reduce Capture*, (2003), World Bank Development Research Group.

³⁶ Patrick Wintour, *Overseas Territories Spared from UK Law on Company Registers*, The Guardian, Apr. 12, 2016, available at <https://www.theguardian.com/business/2016/apr/12/overseas-territories-spared-from-uk-law-on-company-registers> (last visited Dec. 8, 2016).

patchy at best. States may pass legislation that meets with UNCAC requirements, but UNCAC has little power to compel signatories to actively enforce these rules. The same applies to the OECD's anti-bribery treaty, with little more than a handful of states actively enforcing its provisions. International law is inevitably "softer" than national law, but the outputs from these initiatives are still disappointing.

If one were to ask business leaders about international attempts to regulate corrupt practice, then the chances are that it would talk more about national pieces of legislation than about international law. Despite being largely dormant for a quarter of a century, the United States' Foreign Corrupt Practices Act (FCPA) has now become something that firms from all countries that operate in the global economy have to be aware of. The fact that the FCPA can now be seen to apply to companies that only have a minimal presence in the USA is for many evidence that the FCPA is overstretching. For others, it is simply a clear, powerful statement against a deep-rooted norm that traditionally saw foreign bribery as part of the game. Throw in an even more powerful UK Bribery Act (UKBA) and it is clear that national anti-corruption regimes are making an impact on how firms think about bribery as a business tool. Quite how these thoughts are evolving remains a moot point; the UKBA in particular is still new and the convictions have been few in number and often small in scope, but these laws send a clear statement that things in the bribery world are changing. There is also evidence that states where firms have been prosecuted under the FCPA are more likely to beef up and indeed enforce their own domestic bribery laws. Again, this is certainly progress.

Governments intent on tackling corruption nonetheless face a real challenge in demonstrating that their efforts are having an impact. High profile attempts to imprison big names might look good, but they can often have the feel of tokenism. Changing the norms of behavior is a long-term game and, indeed, it is not one that national governments can realistically play. They have neither the time nor the tools to take on such challenges. In this regard it is an impressive government that embraces agendas for reform over the medium, let alone the long-term. Successful reform requires the identification of specific goals and it requires a clear explanation of how these reforms are going to be achieved. Any government that claims it will be adopting a zero-tolerance approach or indeed that it will sweep away corruption should be treated with some caution. In a world of ever more populist rhetoric, it is much better to under-promise and over-deliver rather than the other way around.

The best reforms are subsequently those that bring a broad range of actors together to pursue sets of agreed aims. Sometimes this involves talking to power-holders or power-brokers who have interests that need to be respected. This may involve talking to people who ideally would be avoided. But in many states there is no way around the fact that those in power could potentially have much to lose if genuine reform is enacted. Expecting them to give up what they have and even agree to things where they or their allies could end up coming into conflict with the law is simply unrealistic. Turkey's do not

vote for Christmas, after all. The real challenge is working out what progress is possible where. Policies that help citizens find out just a little more about how decisions are made, about how they can legitimately defend their own interests and that hold those in power responsible for their actions are likely to be steps forward. But, do not expect them to be simple steps or ones that with something to lose will take lying down. The road to reform is incremental, confusing and often involves spending considerable time lost down cul-de-sacs.

Anti-corruption is also not an island in a sea. It makes little sense to create institutions that do not talk and indeed work with each other and with broader society at large. Successful anti-corruption needs an educational element, just as it also needs an institutional and a social element. Only when all these things interact and work together is serious progress likely to be made.